



AN ACT REVISING LAWS RELATING TO ALTERNATIVE NICOTINE PRODUCTS, VAPOR PRODUCTS, AND TOBACCO; LIMITING LOCAL GOVERNING UNITS FROM PROHIBITING THE SALE OF ALTERNATIVE NICOTINE PRODUCTS OR VAPOR PRODUCTS; INCREASING THE FEE TO SELL ALTERNATIVE NICOTINE PRODUCTS OR VAPOR PRODUCTS AND CERTAIN TOBACCO PRODUCTS; AMENDING SECTIONS 7-1-111, 16-11-122, AND 16-11-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Alternative nicotine products and vapor products -- local ordinance or resolution -- prohibition. (1) A local government may not adopt or enforce any local ordinance or resolution that prohibits the sale of alternative nicotine products or vapor products.

(2) Subject to 16-11-311, nothing in this section may be construed to restrict a local government from enacting reasonable ordinances or resolutions relating to the sale of alternative nicotine products or vapor products.

Section 2. Section 7-1-111, MCA, is amended to read:

"7-1-111. (Subsection (21) effective October 1, 2021) Powers denied. A local government unit with self-government powers is prohibited from exercising the following:

(1) any power that applies to or affects any private or civil relationship, except as an incident to the exercise of an independent self-government power;

(2) any power that applies to or affects the provisions of 7-33-4128 or Title 39, except that subject to those provisions, it may exercise any power of a public employer with regard to its employees;

(3) any power that applies to or affects the public school system, except that a local unit may impose an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall

exercise any power that it is required by law to exercise regarding the public school system;

(4) any power that prohibits the grant or denial of a certificate of compliance or a certificate of public convenience and necessity pursuant to Title 69, chapter 12;

(5) any power that establishes a rate or price otherwise determined by a state agency;

(6) any power that applies to or affects any determination of the department of environmental quality with regard to any mining plan, permit, or contract;

(7) any power that applies to or affects any determination by the department of environmental quality with regard to a certificate of compliance;

(8) any power that defines as an offense conduct made criminal by state statute, that defines an offense as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of \$500, 6 months' imprisonment, or both, except as specifically authorized by statute;

(9) any power that applies to or affects the right to keep or bear arms;

(10) any power that applies to or affects a public employee's pension or retirement rights as established by state law, except that a local government may establish additional pension or retirement systems;

(11) any power that applies to or affects the standards of professional or occupational competence established pursuant to Title 37 as prerequisites to the carrying on of a profession or occupation;

(12) except as provided in 7-3-1105, 7-3-1222, or 7-31-4110, any power that applies to or affects Title 75, chapter 7, part 1, or Title 87;

(13) any power that applies to or affects landlords, as defined in 70-24-103, when that power is intended to license landlords or to regulate their activities with regard to tenants beyond what is provided in Title 70, chapters 24 and 25. This subsection is not intended to restrict a local government's ability to require landlords to comply with ordinances or provisions that are applicable to all other businesses or residences within the local government's jurisdiction.

(14) subject to 7-32-4304, any power to enact ordinances prohibiting or penalizing vagrancy;

(15) subject to 80-10-110, any power to regulate the registration, packaging, labeling, sale, storage, distribution, use, or application of commercial fertilizers or soil amendments, except that a local government may enter into a cooperative agreement with the department of agriculture concerning the use and application

of commercial fertilizers or soil amendments. This subsection is not intended to prevent or restrict a local government from adopting or implementing zoning regulations or fire codes governing the physical location or siting of fertilizer manufacturing, storage, and sales facilities.

(16) subject to 80-5-136(10), any power to regulate the cultivation, harvesting, production, processing, sale, storage, transportation, distribution, possession, use, and planting of agricultural seeds or vegetable seeds as defined in 80-5-120. This subsection is not intended to prevent or restrict a local government from adopting or implementing zoning regulations or building codes governing the physical location or siting of agricultural or vegetable seed production, processing, storage, sales, marketing, transportation, or distribution facilities.

(17) any power that prohibits the operation of a mobile amateur radio station from a motor vehicle, including while the vehicle is in motion, that is operated by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States;

(18) subject to 76-2-240 and 76-2-340, any power that prevents the erection of an amateur radio antenna at heights and dimensions sufficient to accommodate amateur radio service communications by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States;

(19) any power to require a fee and a permit for the movement of a vehicle, combination of vehicles, load, object, or other thing of a size exceeding the maximum specified in 61-10-101 through 61-10-104 on a highway that is under the jurisdiction of an entity other than the local government unit;

(20) any power to enact an ordinance governing the private use of an unmanned aerial vehicle in relation to a wildfire;

(21) any power to prohibit completely adult-use providers, adult-use marijuana-infused products providers, and adult-use dispensaries from being located within the jurisdiction of the local government except as allowed in Title 16, chapter 12; or

(22) any power to prohibit the sale of alternative nicotine products or vapor products as provided in [section 1(1)]."

Section 3. Section 16-11-122, MCA, is amended to read:

"**16-11-122. License fees -- renewal.** (1) Each application for a wholesaler's license or a tobacco product vendor's license must be accompanied by a fee of \$50.

(2) Each application for a subjobber's license must be accompanied by a fee of \$50.

(3) Each application for a retailer's license must be accompanied by a fee of ~~\$5~~ \$50.

(4) Each application for a license to sell either alternative nicotine products or vapor products must be accompanied by a fee of ~~\$5~~ \$20.

(5) The fees for the licenses in subsections (2) and (3) may be paid by credit card and may be discounted for payment processing charges paid by the department to a third party.

(6) These licenses must be renewed annually on or before the anniversary date established by rule by the board of review established in 30-16-302 and upon payment of the annual fee are effective for 1 year, without proration, and are not transferable."

Section 4. Section 16-11-311, MCA, is amended to read:

"**16-11-311. Local regulations.** A local government may by ordinance adopt regulations on the subjects of 16-11-301 through 16-11-308, including alternative nicotine or vapor products as provided in [section 1], that are no more stringent than 16-11-301 through 16-11-308 and [section 1]."

Section 5. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 16, chapter 11, part 3, and the provisions of Title 16, chapter 11, part 3, apply to [section 1].

Section 6. Effective date. [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,
SB 398, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2021.

Speaker of the House

Signed this _____ day
of _____, 2021.

SENATE BILL NO. 398

INTRODUCED BY J. ELLSWORTH, M. BLASDEL, S. FITZPATRICK, G. HERTZ, G. VANCE, D. BEDEY, S. BERGLEE, M. BINKLEY, E. BUTTREY, J. CARLSON, W. GALT, S. GIST, S. GUNDERSON, C. HINKLE, M. HOPKINS, C. KNUDSEN, B. LER, R. MARSHALL, F. NAVE, M. NOLAND, A. REGIER, K. SEEKINS-CROWE, D. SKEES, M. STROMSWOLD, J. TREBAS, B. TSCHIDA, S. VINTON

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